

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CONRAD BAILEY,
Plaintiff,

v.

DUPRELL WILLIAMS, MAYHEW
TRUCKING, LLC, CANAL
INSURANCE COMPANY, and ABC.
CORPORATION,
Defendants.

CIVIL ACTION FILE

NO.:

NOTICE OF REMOVAL

TO: Judges of the United States District Court
Northern District of Georgia, Atlanta Division

Pursuant to 28 U.S.C. § 1441 *et seq.*, Defendants Mayhew Trucking, LLC and Canal Insurance Company (hereinafter “these Defendants”) hereby remove the civil action captioned *Conrad Bailey v. Duprell Williams, Mayhew Trucking, LLC, Canal Insurance Company and ABC Corporation*, State Court of DeKalb County, Civil Action File No. 23A02641 from the State Court of DeKalb County, Georgia, to the United States District Court for the Northern District of Georgia, Atlanta Division. Removal is based upon the following:

Removal Based on Diversity Jurisdiction

1. This Court has original jurisdiction of this matter pursuant to 28 U.S.C. § 1332 and this matter may be removed to this Court under 28 U.S.C. §§ 1441 and 1446.

Description of the Action

2. On June 14, 2023, Plaintiff filed a Complaint against these Defendants and Defendant Duprell Williams alleging negligence related to a motor vehicle accident that occurred on or about June 20, 2021 in Rockdale County, Georgia. *See generally*, Plaintiff’s Complaint (Exhibit “A”); Motor Vehicle Crash Report (Exhibit “B”).

Consent for Removal

3. The procedure for removing a case to Federal Court is codified in 28 U.S.C. § 1446 and requires that “all defendants who have been properly joined and served” consent to the removal. 28 U.S.C. § 1446(b)(2)(A) (emphasis added); *Cook v. Randolph County, Ga.*, 573 F.3d 1143, 1150 (11th Cir. 2009); *Tri-Cities Newspaper, Inc. v. Tri-Cities Printing Pressmen and Assistants’ Local 349*, 427 F.2d 325, 326-27 (5th Cir. 1970).

4. These Defendants consent to the removal of this Action through undersigned counsel.

5. Defendant Duprell Williams has not been served and therefore his consent is not required under 28 U.S.C. § 1446(b)(2)(A). *Johnson v. Wellborn, et al.*, 418 Fed.Appx. 809, 815 (11th Cir. 2011) (“The requirement that there be unanimity of consent in removal cases with multiple defendants does not require consent of defendants who have not been properly served.”)

6. ABC Corporation is a fictitious “place holder” defendant and its consent is also not required by 28 U.S.C. § 1446(b)(2)(A) due to not being properly joined and having not been served. *Johnson, supra*.

7. These Defendants, which are the only defendants properly joined and served within the meaning of 28 U.S.C. § 1446, file the Notice of Removal of this Action.

The Amount in Controversy Requirement

8. In diversity cases, 28 U.S.C. § 1332(a) requires that the matter in controversy exceed the sum or value of \$75,000.

9. According to Plaintiff’s Complaint, he seeks to recover damages for personal injury, past, present, and future pain and suffering, general damages, unspecified special damages, impaired ability to labor, loss of enjoyment of life, and loss of earning capacity. *See* Plaintiff’s Complaint ¶ 27. Plaintiff also seeks damages for “wrongful death”, although these Defendants are not aware of a death

having occurred. *Id.* Finally, Plaintiff claims he is entitled to an award of punitive damages without limitation or cap. *Id.* ¶ 36. Plaintiff's Complaint is silent as to the total amount of damages sought.

10. Prior to filing the Complaint, on March 29, 2023, Plaintiff, through counsel, made a demand for \$1,000,000 and claimed special damages of \$47,349.20. *See Demand (Exhibit "C")*.

11. Thus, the amount in controversy has been established by a preponderance of the evidence pursuant to 28 U.S.C. § 1446(c)(2)(A)-(B) as shown by Plaintiff's Complaint and Demand.

The Diversity of Citizenship Requirement

12. For diversity jurisdiction under 28 U.S.C. § 1332(a)(1), the parties must be citizens of different states.

13. Plaintiff is a resident and citizen of the State of Georgia and is entirely diverse from these Defendants. Plaintiff's Complaint ¶ 1.

14. Defendant Duprell Williams is a resident and citizen of the State of North Carolina and is entirely diverse from Plaintiff. Plaintiff's Complaint ¶ 4; Motor Vehicle Crash Report at 1.

15. Defendant Mayhew Trucking, LLC is a foreign corporation with its state of incorporation and principal place of business being the State of North

Carolina. Defendant Mayhew Trucking, LLC's only member is Monta Davarus Mayhew, who is a resident and citizen of the State of North Carolina. Defendant Mayhew Trucking, LLC is, therefore, a citizen of North Carolina and is entirely diverse from Plaintiff. Plaintiff's Complaint ¶ 2; Defendant Mayhew Trucking, LLC's Answer ¶ 2 (Exhibit "D"); Information from North Carolina Secretary of State Website (Exhibit "E").

16. Defendant Canal Insurance Company is a foreign corporation with its state of incorporation and principal place of business being the State of South Carolina. Defendant Canal Insurance Company is, therefore, a citizen of South Carolina and is entirely diverse from Plaintiff. Plaintiff's Complaint ¶ 3; Defendant Canal Insurance Company's Answer ¶ 3 (Exhibit "F"); Information from Georgia Secretary of State Website (Exhibit "G").

17. Defendant ABC Corporation is a fictitious defendant that is disregarded for purposes of the diversity analysis. 28 U.S.C. § 1441(B)(1) ("In determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded.")

Compliance with Deadline for Removal

18. Pursuant to 28 U.S.C. §1446(b)(2)(B), each defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons to file the notice of removal.

19. Defendant Mayhew Trucking, LLC was served on June 16, 2023 and Defendant Canal Insurance Company was served on June 19, 2023. *See* Affidavits of Service re: these Defendants (Exhibits “H” and “I”).

20. These Defendants have initiated removal within 30 days of service on these Defendants. Based on 28 U.S.C. § 1446(b)(2)(B)-(C) this Notice of Removal is timely filed.

The State Court Proceeding

21. The state court proceeding is identified as follows: *Conrad Bailey v. Duprell Williams, Mayhew Trucking, LLC, Canal Insurance Company and ABC Corporation*, State Court of DeKalb County, Civil Action File No. 23A02641. A Notice of this Removal will be filed with the State Court of DeKalb County upon filing of this Notice of Removal pursuant to 28 U.S.C. § 1446(d).

All State-Court Documents

21. Pursuant to 28 U.S.C. § 1446(a), the following state-court filings are attached hereto: Plaintiff’s Complaint (Exhibit “A”); Defendant Mayhew Trucking,

LLC's Answer to Plaintiff's Complaint (Exhibit "D"); Defendant Canal Insurance Company's Answer to Plaintiff's Complaint (Exhibit "F"); Affidavit of Service on Defendant Mayhew Trucking, LLC (Exhibit "H"); Affidavit of Service on Defendant Canal Insurance Company (Exhibit "I"); Summons to Defendants (Exhibit "J"). Written discovery requests served by Plaintiff have not been attached for the sake of brevity.

WHEREFORE, these Defendants exercise their right under the provisions of 28 U.S.C. § 1441, *et seq.* to remove this action from the State Court of DeKalb County, Georgia, to the United States District Court for the Northern District of Georgia, Atlanta Division.

This 13th day of July, 2023.

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**ATTORNEYS FOR DEFENDANTS
MAYHEW TRUCKING, LLC AND
CANAL INSURANCE COMPANY**

CERTIFICATE OF COMPLIANCE WITH N.D. GA. LOCAL RULE 5.1B

This is to certify that this pleading was created in Times New Roman 14-point font in accordance with Northern District of Georgia Local Rule 5.1B.

This 13th day of July, 2023.

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***ATTORNEYS FOR DEFENDANTS
MAYHEW TRUCKING, LLC AND
CANAL INSURANCE COMPANY***

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the within and foregoing **NOTICE OF REMOVAL (Federal)** has been served electronically by operation of the Court's electronic filing system using the **CM/ECF SYSTEM** to the following attorney(s) of record listed below:

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Sed Mathis, Esq.
The J. L. Law Group, LLC
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This 13th day of July, 2023.

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